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July 18, 2020

BY EMAIL AND
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Evelyn Rivera-Ocasio, Esq.
Assistant General Counsel
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 Rd. 165, km. 1.2
Guaynabo, Puerto Rico 00968-8069
Rivera-ocasio.evelyn@epa.gov

Re: Administrative Compliance Order CWA-02-2020-3106
Palmas de Cerro Gordo Development Pump Station
Plan

Dear sister counsel Rivera-Ocasio:

As unilaterally required by the Environmental Protection Agency (“EPA”) under the referenced Administrative Compliance Order (“the Order”), Estancias de Cerro Mar, Inc. (“Estancias”) hereby respectfully submits its proposed plan (the “Plan”) with a schedule of the proposed technical work to be performed to the Palmas de Cerro Gordo Development Pump Station (the “Pump Facility”) in order to: (a) prevent sanitary sewer overflows (“SSO”) from occurring at the Pump Facility, and (b) continue to ensure that the Pump Facility is not the direct cause of any SSO’s occurring at the wastewater sewer collection systems owned and improperly operated/maintained by the Puerto Rico Aqueduct and Sewer Authority (“PRASA”) for the Villa Alegria and Palmas de Cerro Gordo residential developments that discharge into the Pump Facility. See, Attachment 1.

Estancias submits the Plan on behalf of itself, and as the agent for and on behalf of PRASA, the latter which is the lawful owner of the Pump Facility and which has rejected assuming title to the Pump Facility during two (2) decades of bad faith dealings. Further, Estancias submits the Plan in its endless efforts to act in good faith and as a good corporate citizen in the face of continued acts of inequity and acts that are arbitrary, capricious and contrary to laws applicable to PRASA and the EPA. Estancias does not make any admission of fact or law, or evidence of same, or of any violation of any

permit, law or regulation, and does not submit to the jurisdiction of the EPA. The fact is that Estancias has remained in compliance with the CWA.

Estancias reiterates that the EPA's arbitrary and capricious actions in the initial stages of this case (including its decision not to dismiss parties as Respondents that do not have any rights to or control over the Pump Facility without any legal basis and its unwillingness to include PRASA in the Order as an indispensable party under the guise that EPA is only responding to citizen complaints) are hardly conducive to environmental protection. EPA is excusing and turning a blind eye to PRASA's clear responsibility in this case – yet again. It is clear as a matter of fact and law, that PRASA owns and operates the sewer collection systems related to the Villa Alegria and Palmas de Cerro Gordo developments. Estancias will not assume any obligations regarding the operation or maintenance of the sewer collection systems owned and operated by PRASA.

The EPA claims that it has tried resolve a problem related to discharges at the Palmas de Cerro Gordo Development. However, despite the EPA having full knowledge that PRASA is a responsible party to any potential sewage discharges at the Palmas de Cerro Gordo Urbanization, it has affirmatively chosen to shield PRASA and utilize the full power of the United States to force Estancias to meet PRASA's arbitrary and capricious demands to have the Pump Station completely remodeled and refurbished (on at least two prior occasions already), at a cost of hundreds of thousands of dollar. In this case, the EPA knows well of PRASA's negligent operation of its additional pump located approximately 800 mts southeast of the urbanization and which has connected forty (40) additional and unauthorized residential units to its sewer collection system, thus affecting Estancias and the urbanization. Further, upon information and belief, other zones of the Cerro Gordo Ward are also connected to the same system. Meanwhile, the sole party financially benefiting from operating that sewer collection system and both pump stations is PRASA.

Despite (i) those facts, (ii) no evidence of discharges during the period the Order was issued, (iii) notice of possible false information having been provided to the EPA's by an urbanization resident, and (iv) the agency's representation that it would investigate such facts/incidents with PRASA, its sole response was to proceed to issue the Order against Estancias and other non-responsible included parties. Such acts are arbitrary.

Lastly, and more importantly, Estancias requests a specific factual and legal determination from EPA that any discharges at the Pump Facility into the ground fall under the jurisdiction of EPA under the Clean Water Act in light of the United States Supreme Court's recent decision of County of Maui v. Hawai'i Wildlife Fund. The factual findings and conclusions of law in the Order are clearly insufficient in this case to assert jurisdiction over Estancias. There is no allegation whatsoever that there any SSO's at the Pump Facility that reach any surface waters of the United States.

Based on the foregoing, Estancias hereby requests that EPA acknowledge Estancias' timely and full compliance with the relevant Ordered Provision, as thereafter

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amended by the parties. Further, due to PRASA and PREPA's recurring lack of availability in this matter, Estancias understands that it is absolutely necessary for EPA to adhere to the COVID-19 policies adopted by the United States and Puerto Rico, including the EPA's own policies. Such policies and current reality may require a stay or any other appropriate remedy that takes into consideration the circumstances. Meanwhile, it is uncontested that Estancias has and continues to take all necessary steps to avoid any discharges.

Sincerely yours,

/s/Thomas Trebilcock Horan

c: Mr. Héctor Ortiz (EPA)
Mr. Hector Rivera (Estancias)
Edwin R. Cruz, Esq. (Pietrantonio Méndez & Álvarez)

ATTACHMENT 1

EPA ADMINISTRATIVE COMPLIANCE ORDER NO. CWA-02-2020-3106 PROPOSED PLAN

Estancias hereby respectfully proposes to implement, or cause its authorized representatives, contractors and consultants to implement, the following measures with respect to the findings alleged by the Environmental Protection Agency (“EPA”) in its Administrative Compliance Order No. CWA-02-2020-3106 (“the Order”), so as to comply with the relevant Ordered Provisions.

	Equipment or Task	Description of Work	Schedule (After Order)	Status
1	General	Work with independent, experienced wastewater technical consultants to provide technical advice regarding the Order.	Immediately.	
2	General	Work with PRASA for it to investigate and address the technical confirmation of excess connections (40+ homes) to the Villa Alegria system.	Depending on PRASA’s availability in light of the pandemic.	
3	General	Work with PRASA for it to investigate and address the technical confirmation of excessive stormwater connections to the sewer collection systems.	Depending on PRASA’s availability in light of the pandemic.	
4	General	Work with PRASA for it to investigate and address the technical confirmation of groundwater inflow into the sewer collection systems.	Depending on PRASA’s availability in light of the pandemic.	
5	General	Work with PRASA to re-evaluate the adequacy of the design capacity of the existing Pump Facility in light of the significant change in volume to the pumps due to PRASA acts and omissions.	Depending on PRASA’s availability in light of the pandemic.	
6	General	Work with PRASA to determine whether the pump station which it owns and operates in the Villa Alegria urbanization has adequate and functional grinders to break down debris which is transferred to the Pump Station.	Depending on PRASA’s availability in light of the pandemic.	
7	General	Work with PRASA for it to investigate what other, if any, sections/zones of the Cerro Gordo Ward are connected to PRASA’s sewer collection system which discharges into the Pump Station.	Depending on PRASA’s availability in light of the pandemic.	

8	General	Submit to EPA a notification of each SSO at the Pump Facility within 24 hours of becoming aware of the event. This shall not include any event at PRASA's sewer collections systems.	From the date hereof until the completion of this Plan.	
9	Permanent Power Supply (PREPA)	Secure a reliable power source. Work with LPCG Homeowners Association and the Puerto Rico Power Electric Authority to secure the same.	Depending on PREPA's availability in light of the pandemic.	
10	Alternate Power Unit	Engage a licensed electrician to evaluate the Emergency Power Plant.	Depending on the contractor's availability in light of the pandemic.	
11	PRASA Matters	Continue engaging in transfer efforts with PRASA.	Depending on PRASA's availability in light of the pandemic.	
12	Miscellaneous matters with PRASA	Take affirmative steps to: (i) secure PRASA's disconnection of unauthorized residential units and/or other units from the sewer collection system which discharges into the Pump Station.	Depending on PRASA and others' availability in light of the pandemic.	

Reservation of Rights. If Estancias is unable to comply with the deadlines established in this Plan due to reasons beyond its reasonable control, said time period shall be automatically extended by the same number of days of said delay. Estancias shall also be able to extend said time period for good cause. Estancias will notify EPA in writing of said automatic extensions as soon as practicable.